

V. Section 207 Recognizes that Viewers' First Amendment Interests are Paramount.

Even if landlords and condominium associations had a colorable basis for their claims, a proposition Philips and Thomson unequivocally reject, their asserted interests do not outweigh the countervailing rights that their tenants and unit owners possess under the First Amendment as viewers of electronic video programming services. Section 207 is entirely consistent with a long line of legal precedent which provides that viewers have a "paramount" First Amendment right to receive a variety of information from diverse sources.

More than a quarter century ago, the Supreme Court first emphasized the primary role of viewers in effectuating the First Amendment's objective of "an uninhibited marketplace of ideas" in the context of broadcast communications, declaring the rights of viewers and listeners to be "paramount." Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367, 390 (1969). The Court stated that "[i]t is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here." Id. (emphasis added).

The paramount importance of viewers' right to access video programming was most recently reaffirmed by the Supreme Court in cases arising under the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"). In Turner Broadcasting System, Inc. v. Federal Communications Commission, ___ U.S. ___, 114 S. Ct. 2445 (1994), the Court confronted a

First Amendment challenge to the must-carry provisions of the 1992 Cable Act. Although the Court did not reach the ultimate merits of the constitutionality of the must-carry requirements -- owing to the existence of genuine issues of material fact -- it affirmed the paramount importance of viewers' access to information from diverse sources. The Court stated: "[a]ssuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment." Turner, 114 S.Ct. at 2470. The Court noted that "Congress' overriding objective in enacting must-carry was not to favor programming of a particular subject matter, viewpoint, or format, but rather to preserve access to free television programming for the 40 percent of Americans without cable." Turner Broadcasting System, 114 S. Ct. at 2461 (emphasis added). The Court specifically held that this objective -- "to ensure that every individual with a television set can obtain access to free television programming" -- was 'not only a permissible governmental justification, but an 'important and substantial federal interest.'" Id. (quoting Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 714 (1984)).

Most recently, the D.C. Circuit Court of Appeals affirmed the Red Lion principle that viewers' First Amendment rights are paramount in the context of DBS service. Time Warner Entertainment Co. v. Federal Communications Commission, 1996 U.S. App. LEXIS 22387, *49 (D.C. Cir. 1996). In upholding Section 25 of the 1992 Cable Act which requires that DBS providers set aside

4 to 7 percent of their capacity for noncommercial educational programming, the court concluded that Section 25 is merely a new application of a "well-settled government policy of ensuring public access to noncommercial programming." Id. at *54.

Section 207 fulfills a congressional objective very much like that at issue in Turner Broadcasting and Time Warner, namely, ensuring viewers' access to video programming from a wide array of sources. The Commission cannot and must not subordinate this "important and substantial federal interest" to the dubious claims of landlords in implementing Section 207.

VI. It is Technically Feasible for a DBS Service Provider to Offer Programming to Apartment Dwellers through a Single Dish Antenna on the Roof and Such Equipment is Widely Available Commercially.

If the Commission extends its preemption rules to prevent landlords from enforcing restrictions which would impair a tenants' ability to receive direct broadcast satellite services, the landlord or condominium association could still have considerable discretion in determining the means by which tenants or unit owners could be provided access to DBS based upon the characteristics of the dwelling unit as long as tenants or unit owners could receive a quality signal. For example, in the case of a high rise apartment, Philips and Thomson do not envision a situation in which each tenant or unit owner would require his or her own dish antenna on the roof. Instead, Philips and Thomson contemplate that all tenants or unit owners in a high rise building electing to subscribe to a particular DBS service would be able to access that programming through a single common DBS

dish antenna on the rooftop. The signals could be distributed to individual units through wire using the same conduit utilized by an incumbent cable or SMATV operator. In the case of attached low rise units, such as townhouses, the landlord or condominium association might elect to require the tenant or unit owner to place the DBS dish antenna in the yard or on the patio, or alternatively, on the roof of his or her unit as long as the placement would not impair the viewer's ability to receive DBS service. Again, the Commission could provide for sufficient flexibility so as to indicate the paramount rights of the viewer to access DBS services while minimizing the extent of intrusion on the property owner's management of the property.

A typical equipment and wiring configuration for a multiple dwelling unit (MDU) setting (e.g. apartment buildings, condominiums, or townhouses) is demonstrated by the first diagram attached in the Appendix.^{23/} As the diagram illustrates, any number of DBS set-top boxes^{24/} may be connected to a single dish. To use a single dish, the dish must be equipped with a dual output LNB (low noise block). The distribution of the satellite signals is accomplished through the use of standard L-band distribution equipment. As the diagram shows, the installation begins with RG-6 cables connected to the two LNB

23/ This diagram (Fig. 4 "Multiple" Multiswitch Installation") is excerpted from the Thomson Technical Training Manual for "New Home Pre-Wiring and Distribution Systems."

24/ On the diagram, the term "receiver" is used to denote the set-top box.

outputs on the dish. The cables are then run to a Satellite IF Splitter (2202IFD). The function of the splitter is to allow for more than one multiswitch to be connected to a dish. Each multiswitch requires a left hand circular polarity (LHCP) feed, and a right hand circular polarity (RHCP) feed to provide all the signals to the set-top boxes that are connected to it. The two-way splitter shown provides for two LHCP feed and two RHCP feeds, necessary to drive two multiswitches. Up to four set-top boxes can be operated from each multiswitch.^{25/} Each set-top box will operate independently and have access to all available satellite signals. In this particular diagram, an "off-air" signal is combined with the satellite signal in the multiswitch. At the location of the set-top box, this signal would be split out using the diplexer (4001IFD) shown.

The diagram shows a total of eight set-top boxes being fed by two multiswitches. This distribution system is expandable to accommodate any number of set-top boxes. The additional hardware required would include additional multiswitches and additional splitters, along with some various distribution hardware required for line amplification, and other special needs associated with a specific installation. However, only one dish, with a dual LNB, is required regardless of the number of set-top boxes connected.

^{25/} For a more detailed illustration of the configuration from a multiswitch, see the second diagram ("Multiple TV/Multiple Receiver/Dual Output LNB with Multiswitch") also excerpted from the Thomson Technical Training Manual for "New Home Pre-Wiring and Distribution Systems" and attached at the Appendix.

All of this equipment and hardware is widely available commercially^{26/} and is in use in MDUs across the country. For example, Thomson recently provided the DSS® system to connect every unit at the Wellington Place complex in Fishers, Indiana in a configuration similar to the one described above. Wellington Place has approximately 500 units which are comprised of one, two, and three bedroom apartments and duplex townhomes. Each apartment building has eight apartments in it. Every unit is now wired to receive DSS® system using only a single dish on each building. From that dish, splitters and multi-switchers are used to provide the DBS feed to each unit. Local television signals are fed into the system using off air antennas located off-premises in an antenna farm.

Conclusion

For the reasons stated above, the Commission should not apply Section 207 of the Act in a disparate manner to homeowners and renters. Congress clearly stated that the Act applies equally to all viewers, without regard to whether or not they own their home. Any distinction based on property ownership, i.e., economic class, would be an invidious discrimination nowhere sanctioned in Section 207 and contrary to specific public policy goals the Commission has championed.

Congress' authority to regulate the public's access to video programming services is beyond reproach, as is the Commission's

^{26/} See e.g., Thomson's RCA Commercial Products Guide for the DSS® System attached at the Appendix.

authority -- and duty -- to implement the Act as Congress intended. The minimal regulation of the landlord-tenant relationship entailed by Section 207 is not a taking in violation of the Fifth Amendment. Even if landlords and condominium associations had a colorable basis for their claim, which they do not, their asserted interest does not outweigh the countervailing rights that their tenants and unit owners possess under the First Amendment as viewers of electronic video programming services.

Respectfully submitted,

PHILIPS ELECTRONICS N.A.

THOMSON CONSUMER ELECTRONICS

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Electronics, Inc.

Dated: September 27, 1996

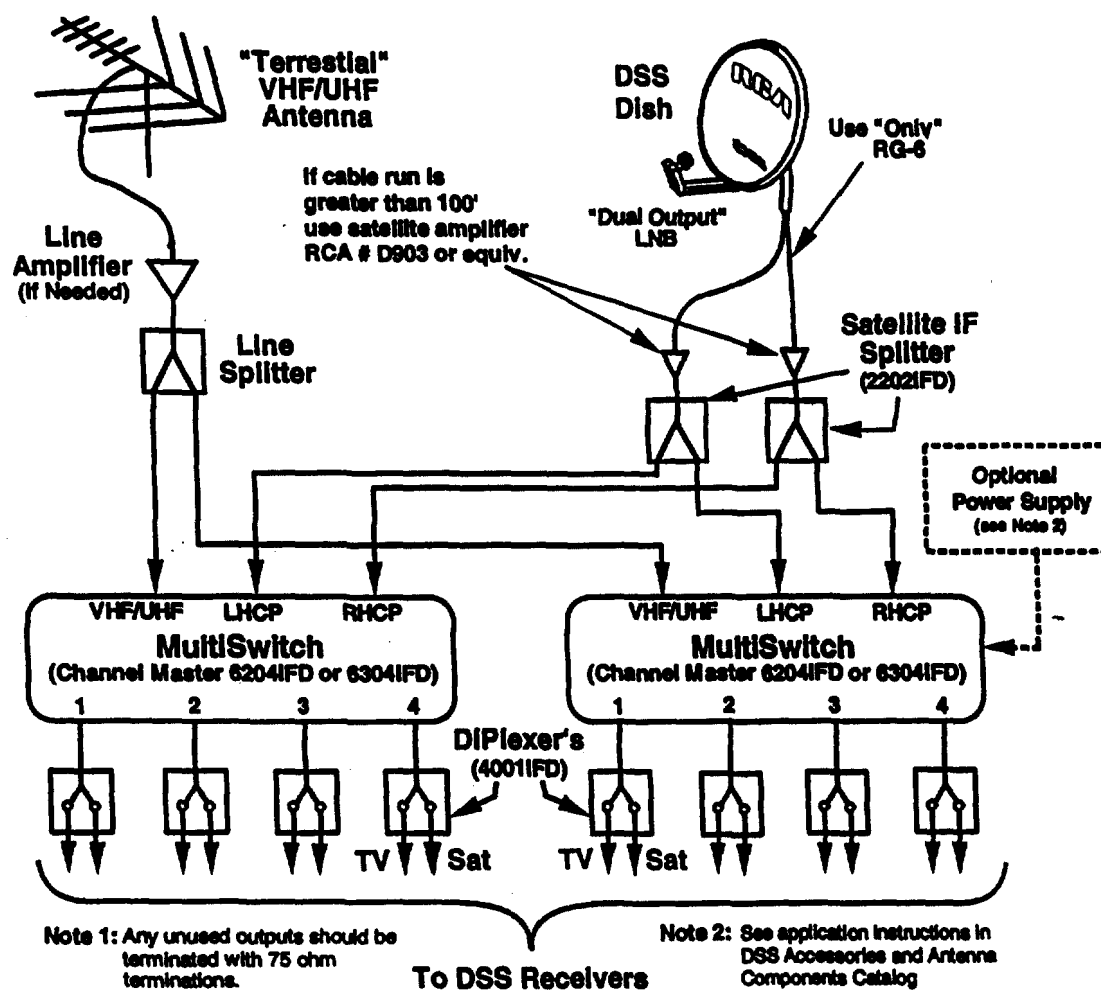
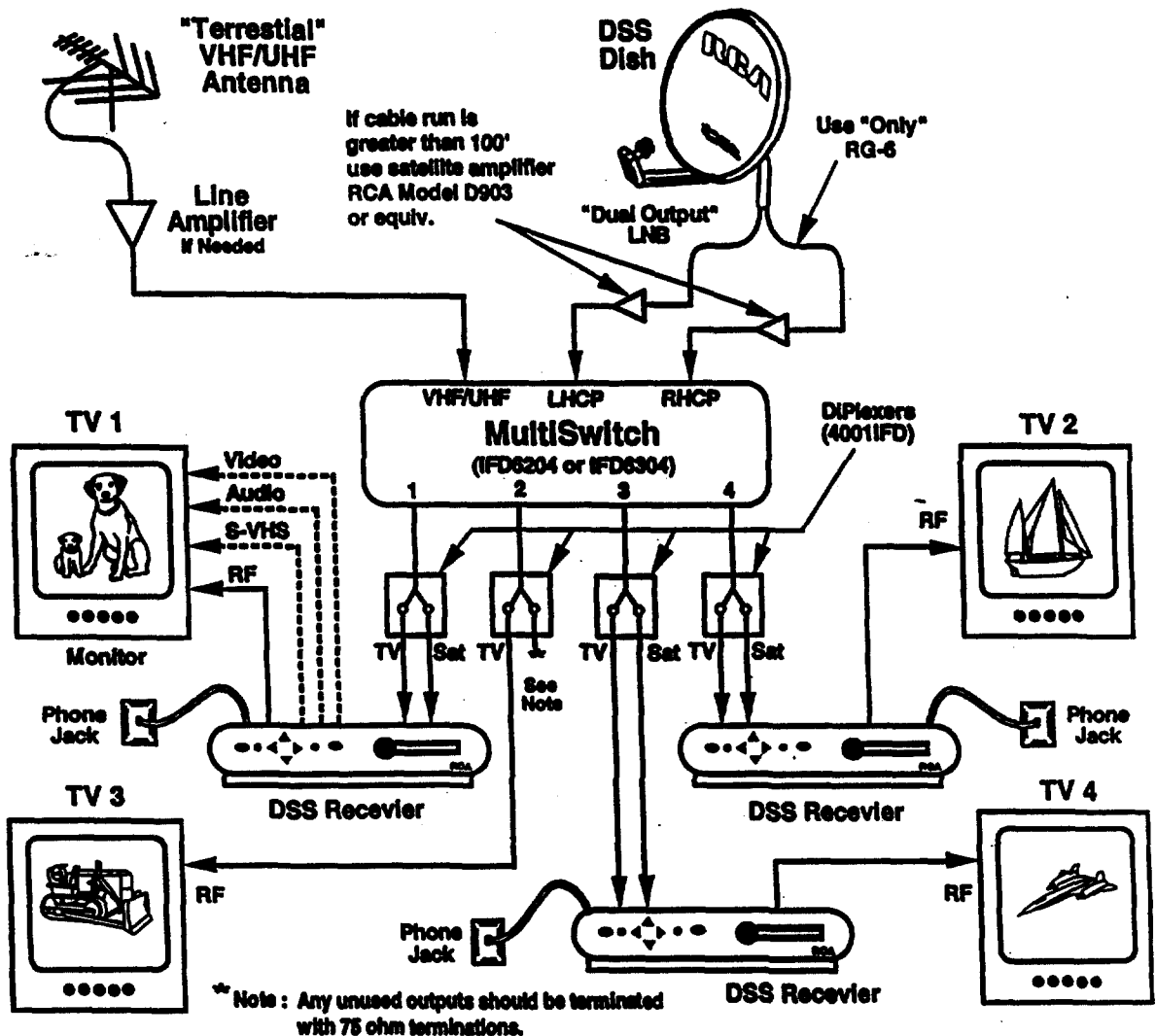


Fig. 4 "Multiple" MultiSwitch Installation

Multiple TV/Multiple Receiver/Dual Output LNB with MultiSwitch



Equipment & Materials

1. DSS System (Dual Output LNB) with additional receivers (Model # DRD102RW).
2. DIPlaxers (Channel Master 4001IFD or equivalent).
3. VHF/UHF Antenna.
4. VHF/UHF Line Amplifier (Channel Master 0064C).
5. Miscellaneous cabling (RF/Audio/Video/S-VHS If Needed).
6. MultiSwitch -- (Channel Master 6204IFD or 6304IFD or equivalent).
6204IFD--Non-Amplified Terrestrial
6304IFD--Amplified Terrestrial (VHF/UHF Line Amp not needed if used).
7. Satellite Amplifier -- If Needed (RCA # D903 or equiv.)

Benefits and/or Restrictions

1. Flexible, Versatile and Expandable system. Utilize in "Prewired" New Home construction.
2. Each TV can view VHF/UHF or Satellite signal independently.
3. Requires extensive installation skills and knowledge of RF distribution systems.

Special Considerations (If any)

1. If 4 or more outputs required -- See Fig. 4, page 14 for example of "Multiple" MultiSwitch installation.
2. Requires installation of "Hub" in central location.
3. Requires phone jack at each receiver location.
4. In "Prewire" applications, dish mounting location must be carefully chosen to consider future landscaping, growth of bushes and trees, etc.

RCA
COMMERCIAL PRODUCTS

Digital
Satellite System

***Engineered for
Commercial Use***

***Non-Volatile
Memory Features***

***Built-In Frequency
Agile Modulator***

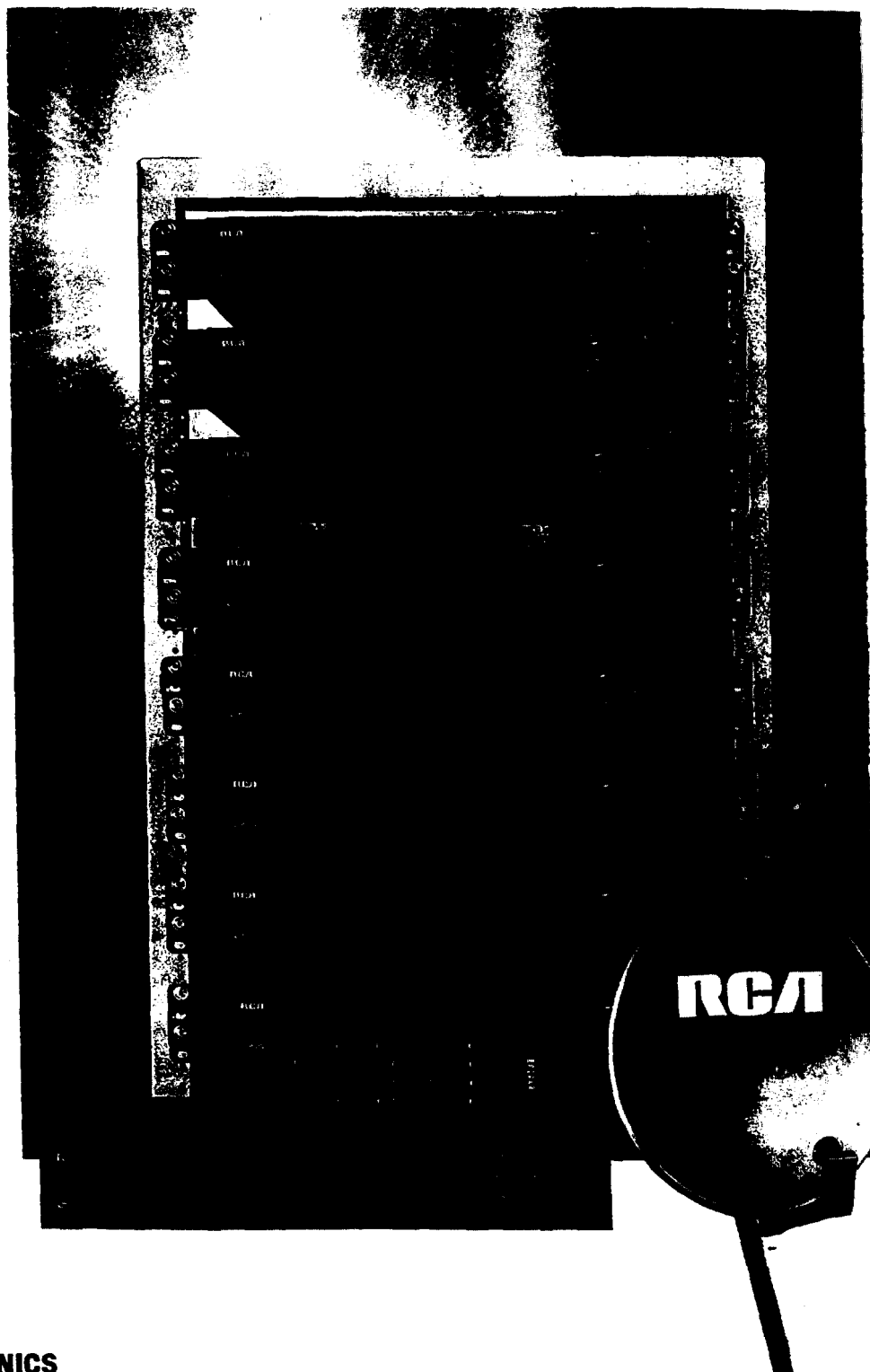
***Unique
Entertainment
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U.S. Satellite Broadcasting



DIRECTV.



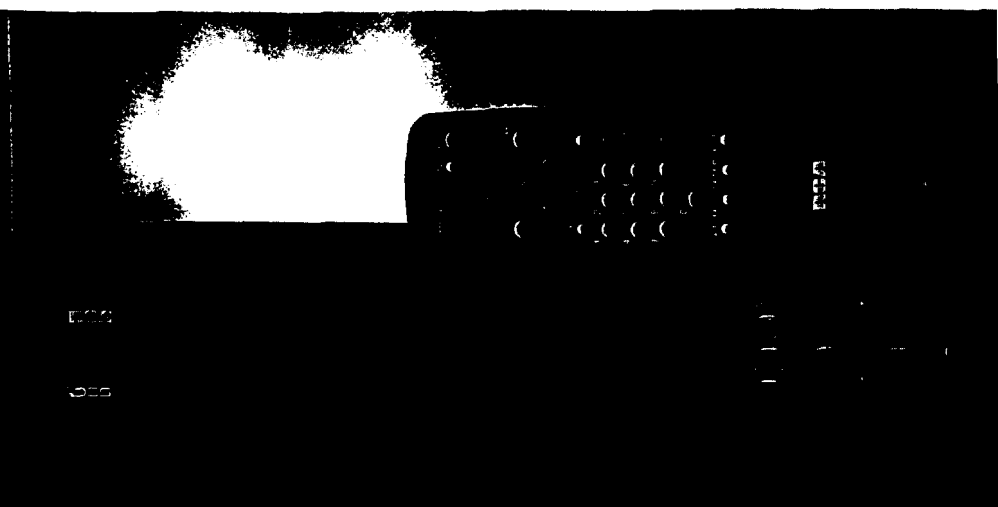
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First In Commercial Digital Television Entertainment.

Digital Satellite Receiver

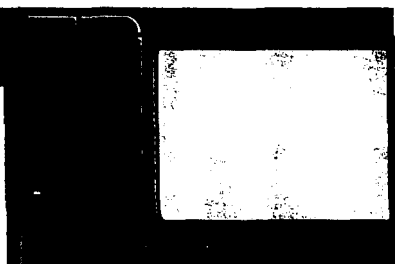
DCD302RA

*Engineered for
Commercial Use*



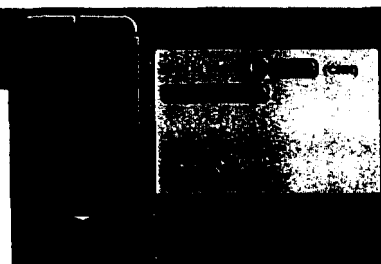
POWER LOCKOUT

Allows auto power-on after a power failure. Also prevents receiver from being turned off.



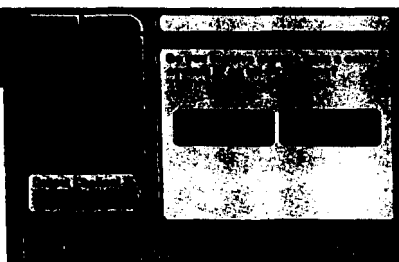
CHANNEL HOLD

Receiver can be locked to a specific channel, preventing unauthorized changes.



BUILT-IN AGILE MODULATOR

Modulates DSS® signal onto an unused TV channel. Offers a cost effective distribution option.



PROGRAM GUIDE HOLD

Timeout on program guide can be disabled, creating a continuous guide channel.



■ INFRARED INPUT JACK

To control receiver with most current signal sending hardware.

■ UL LISTED FOR COMMERCIAL USE

■ ONE-YEAR LIMITED WARRANTY

■ 30-Button Universal Remote Control*

■ 16-Color On-Screen Display {OSD}

■ Hidden Access Card



Rear Jack Panel

Digital Satellite Dish Antenna

DSA201RA

*For Commercial
Applications*



DUAL OUTPUT LNB

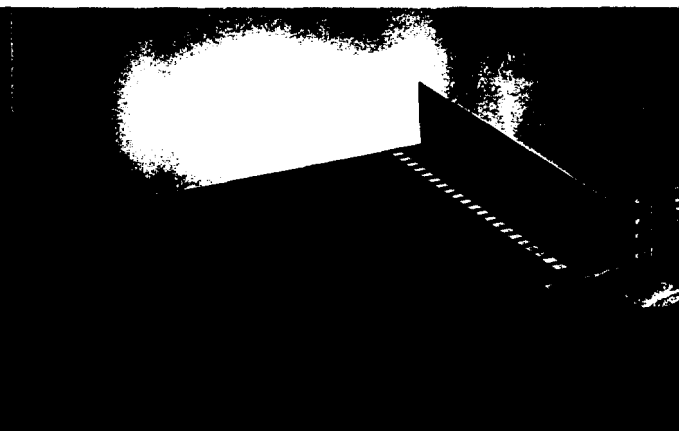
Allows DSS® signal to be output
to multiple receivers.

- 24" Width for Commercial Use
- One-Year Limited Warranty
- Light Satellite Gray Finish

Rack Mount Kit

IRD002K

*Designed for
DCD302RA*



19" MOUNTING BRACKETS

- Allows RCA DSS® receivers to be
mounted in standard equipment racks.
- Flexible setup and security.

- UL Tested for Commercial Use
- One-Year Limited Warranty
- Satin Black Finish

RCA DSS® ACCESSORIES

Multi-Switch D6214

- Provides signal distribution
for head-end and multiple
location installations.
- ▼ Distributes four
independent signals from
dual LNB inputs.
- Optional input for
distribution of an
off-air/cable signal.

Power Divider D2271

- Use to build head-end
and multiple location
installations.
- Allows incoming signal to
be split out to two devices.
- Works with DSS®, cable,
and off-air frequencies
(40-2050 MHz).

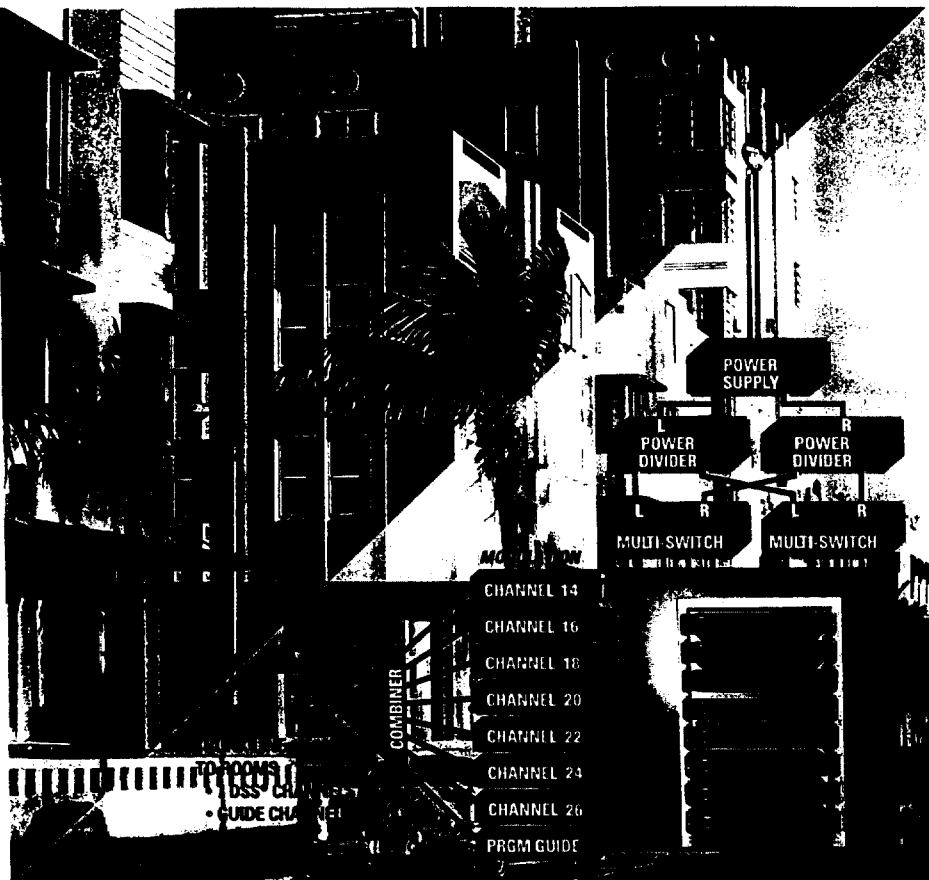
RG-6 Cable D996SPE

- Offers optimal compatibility,
reliability, and signal
transfer with RCA
satellite systems.
- Dual LNB cable with a
messenger wire for proper
grounding.
- 1000-foot bulk spool.

F-Connectors D905

- Heavy-duty, weatherproof
construction.
- Tested under pressure to
ensure water repency.
- Perfect for use with bulk
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- Call your RCA distributor
- Or, call 1-800-333-7221



Dish shown larger than actual size.

DCD302RA	SATELLITE RECEIVER	DSA201RA	SATELLITE ANTENNA
Front Panel Control	8-Button	LNB Input Frequency	12.2-12.7 GHz
Frequency Modulator	Agile 470-806 MHz	LNB Output Frequency	950-1450 MHz
Channels	UHF 14-69, Cable 65-95, 99-125	LNB Output	Twin F-Type
Direct IR Input	3.5mm Mini Jack	LNB Polarity	Dual
Remote Control	CRK91	LNB Feed	Circular
Type	Infrared, 30-Button	Dimension	24"W Parabolic
Universal Operation	Most TV Brands	Construction	Galvanized Steel
Batteries	AAA(4)	Finish	Light Satellite Gray
Power Requirements	120VAC	Shipping Weight	25.4 Lbs.
Power Consumption	24W	UPC Code	034909670590
AV Connections	Rear Panel		
Satellite In	F-Type (950-1450MHz)		
In From Antenna	F-Type		
Out To TV	F-Type		
S-Video	4-Pin DIN		
Video	RCA-Type (2)		
R/L Audio	RCA-Type (2 Pair)		
Wideband Data Port	15-Pin D-Type		
Phone Jack	Modular RJ 11		
Dimensions	15-1/2"W x 2-1/2"H x 14-1/4"D		
Finish	Ebony Texture		
Shipping Weight	8.6 Lbs.		
UPC Code	034909670477		
		IRD002K	RACK MOUNT KIT
		Installation	Mounts In Standard 19" Rack
		Orientation	Front Or Back
		Access Card Door	Secured Or Accessible
		Dimensions	19"W x 2-5/8"H x 14-1/8"D
		Construction	Metal
		Finish	Satin Black Epoxy
		Shipping Weight	6.3 Lbs.
		UPC Code	034909651247



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OFFICE OF SECRETARY

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October 28, 1996

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: IB Docket No. 95-59 -- Second Further Notice of
Proposed Rulemaking on the Preemption of Local Zoning
Regulation of Satellite Earth Stations

Dear Mr. Caton:

Transmitted herewith, on behalf of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. is an original and 11 copies of their Reply Comments in the above-referenced docket.

If you have any questions concerning this matter, please let me know.

Sincerely,

Lawrence R. Sidman

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Consumer Electronics, Inc.

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8280 GREENHORO DRIVE
SUITE 601
McLEAN, VIRGINIA 22102
(703) 749-6000
FAX: (703) 749-6027

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	IB Docket No. 95-59
Preemption of Local Zoning)	
Regulation of Satellite)	
Earth Stations)	
)	
In the Matter of)	
)	
Implementation of Section 207 of)	CS Docket No. 96-83
the Telecommunications Act of 1996)	
)	
Restrictions on Over-the-Air Reception)	
Devices: Television Broadcast Service)	
and Multichannel Multipoint Distribution)	
Service)	

REPLY COMMENTS OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.

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October 28, 1996

Executive Summary of Reply Comments by Philips Electronics
North America Corporation and Thomson Consumer Electronics, Inc.
in IB Docket No.95-59

Section 207 of the Telecommunications Act of 1996 instructs the Federal Communications Commission to issue regulations prohibiting restrictions that "impair a viewer's ability to receive" programming services via the use of DBS dish antennas, and over-the-air broadcast and wireless cable antennas. Congress clearly stated its intent that this section preempt private contractual restrictions on the use of DBS dish antennas and there should be no doubt that the Commission's rules implementing this section should apply to tenants and unit owners in community associations. Section 207 was designed to provide all viewers with access to alternative sources of video programming by eliminating artificial and anti-competitive barriers to new technologies such as direct broadcast satellite (DBS).

Both Congress and the Commission have the legal authority to preempt private contractual restrictions on the use of DBS dish antennas by tenants and community association unit owners. Preempting such restrictions pursuant to Section 207 is not an unconstitutional taking under the Fifth Amendment. The commenters that oppose an extension of the Commission's preemption rules to rental properties and residential situations in which commonly owned property is involved (e.g., condominium complexes and community associations) base their assertions about the constitutionality of such rules on an erroneous factual premise. These commenters assume that to effectuate the mandate of Section 207 the Commission's rules must mandate third-party ownership and control of the DBS dish antennas and facilities or conversion of community property to the exclusive use of an

individual for placement of a DBS dish. After constructing this strawman, these commenters weave a tale of Fifth Amendment takings based on these false assumptions.

However, the Further Notice does not suggest that the Commission contemplates rules involving mandated third-party ownership nor do Philips and Thomson advocate such a position. In fact, providing tenants and unit owners with access to DBS services need not involve third party ownership of facilities. Philips and Thomson believe that the Commission's rules should require that landlords or community associations provide access to DBS services at the request of a tenant or unit owner. The new rules should provide landlords or community associations with considerable discretion in determining the means by which tenants or unit owners could be provided access to the DBS service of that tenant's or unit owner's choice based on the characteristics of the dwelling unit as long as tenants or unit owners could receive a quality service. If adopted, such rules would fulfill the mandate of Section 207 without implicating the Fifth Amendment.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
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Preemption of Local Zoning)	
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REPLY COMMENTS OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.

Philips Electronics North America Corporation ("Philips") and Thomson Consumer Electronics, Inc. ("Thomson") submit reply comments in the above-captioned Further Notice of Proposed Rulemaking ("Second Further Notice") to implement Section 207 of the Telecommunications Act of 1996.

Introduction

Section 207 of the Telecommunications Act of 1996^{1/} instructs the Federal Communications Commission to issue regulations prohibiting restrictions that "impair a viewer's ability to receive" programming services via the use of DBS dish antennas, and over-the-air broadcast and wireless cable antennas. Congress clearly stated its intent that this section preempt private contractual restrictions on the use of DBS dish antennas

^{1/} Telecommunications Act of 1996, § 207, Pub. L. No. 104-104, 104th Cong., 1st Sess. § 207, 110 Stat. 56, 114 (1996)).

and there should be no doubt that the Commission's rules implementing this section should apply to tenants and unit owners in community associations. Section 207 was designed to provide all viewers with access to alternative sources of video programming by eliminating artificial and anti-competitive barriers to new technologies such as direct broadcast satellite (DBS).

Both Congress and the Commission have the legal authority to preempt private contractual restrictions on the use of DBS dish antennas by tenants and community association unit owners. Preempting such restrictions pursuant to Section 207 is not an unconstitutional taking under the Fifth Amendment. The commenters that oppose an extension of the Commission's preemption rules to rental properties^{2/} and residential situations in which commonly owned property is involved (e.g., condominium complexes and community associations) base their assertions about the constitutionality of such rules on an erroneous factual premise. These commenters assume that to effectuate the mandate of Section 207 the Commission's rules must mandate third-party ownership and control of the DBS dish antennas and facilities or conversion of community property to the exclusive use of an individual for placement of a DBS dish.

^{2/} For purposes of these comments, the term "rental properties" include residential properties such as apartment buildings, condominium complexes, and single-family residences. We note that one commenter opposing an extension of the Commission's rules to rental properties also included shopping malls and office buildings in its discussion of rental properties. Joint Comments of the National Apartment Association et al. ("NAA Joint Comments") at 21.

After constructing this strawman, these commenters weave a tale of Fifth Amendment takings based on these false assumptions.

However, the Further Notice does not suggest that the Commission contemplates rules involving mandated third-party ownership nor do Philips and Thomson advocate such a position. In fact, providing tenants and unit owners with access to DBS services need not involve third party ownership of facilities. Philips and Thomson believe that the Commission's rules should require that landlords or community associations provide access to DBS services at the request of a tenant or unit owner. The new rules should provide landlords or community associations with considerable discretion in determining the means by which tenants or unit owners could be provided access to the DBS service of that tenant's or unit owner's choice based on the characteristics of the dwelling unit as long as tenants or unit owners could receive a quality service. If adopted, such rules would fulfill the mandate of Section 207 without implicating the Fifth Amendment.

I. Extending the Commission's Preemption Rules to Rental Property and Community Associations Need Not Require Ownership or Control of DBS Equipment by Third Parties.

In sharp contrast to the parade of horrors that some commenters suggest would result from an extension of the FCC's rules,^{3/} Philips and Thomson envision that the Commission's new

^{3/} See, e.g., Comments of Independent Cable & Telecommunications Association ("ICTA Comments") at 5; NAA Joint Comments at 25-29; Comments of the Community Associations Institute et al. ("CAI Comments") at 27-32. For a rebuttal of these assertions and a discussion of the technical feasibility of using a single DBS antennas to serve multiple households, see Philips and Thomson Comments at 14-17.

rules would only require that landlords or condominium associations provide access to DBS services at the request of a tenant or condominium unit owner. In other words, Philips and Thomson believe that the Commission can formulate a rule that provides access to tenants and unit owners that does not involve a government-mandated, third-party occupation of the landlord's or community association's property, but rather ownership of the DBS dish antenna by the property owner. As one opponent of extending the Commission's rules readily admits "ownership" of the installation by a landlord, tenant in common, or association would remove a situation from a Fifth Amendment takings analysis.^{4/}

Philips and Thomson believe that the Commission's rules should provide landlords or condominium associations with considerable discretion in determining the means by which tenants or unit owners could be provided access to the DBS service of that tenant's or unit owner's choice based on the characteristics of the dwelling unit as long as tenants or unit owners could receive a quality service. For example, in the case of a high rise apartment, Philips and Thomson conceive that all tenants or unit owners who elect to subscribe to a particular DBS service would be able to access that programming through a single common DBS dish antenna on the rooftop provided by the landlord or condominium association. The signals could be distributed to individual units through wire using the same conduit utilized by

^{4/} "It is clear landlord, tenant in common, or association **ownership** of the cable installation would remove the situation from the Loretto analysis." CAI Comments at 16 (emphasis added).

an incumbent cable or SMATV operator. In the case of attached low rise units, such as townhouses, the landlord or condominium association might elect to require the tenant or unit owner to place the DBS dish antenna in the yard, on the patio, on the roof of his or her unit, or some other exclusive use area, as long as the placement would not impair the viewer's ability to receive DBS service. A DBS service provider would have access to a rental property or commonly owned property in the case of a community association upon the invitation of the landlord or association in response to a request by a tenant or unit owner. The commercial provider's presence on the property would be conditional upon that invitation.^{5/} Thus, whether the landlord or community association chooses to install and own its own DBS dish, to turn to a third-party provider, or some other reasonable alternative to make DBS services available would be at the discretion of the landlord or the association.

II. The Application of Section 207's Prohibition of Restrictions to Rental Property and Community Associations Does not Constitute a Taking in Violation of the Fifth Amendment.

Several commenters to the Further Notice erroneously assert that an extension of the Commission's rules implementing Section 207 to rental properties, including apartment buildings, or commonly owned property within, for example, a condominium complex, would constitute a regulatory taking in violation of the Fifth Amendment of the Constitution under Loretto v. Teleprompter

^{5/} Under such circumstances, a DBS service provider would not be an "interloper" or, as one opponent asserts, seizing property pursuant to a statutory directive, since they would only provide their services upon a specific request or "invitation" by the landlord or community association. See ICTA Comments at 6, n. 7.

Manhattan CATV Corp., 458 U.S. 419 (1982).^{6/} This assertion is based on the false premise that the only way the Commission could effectuate the requirements of Section 207 would be to mandate third-party ownership and control of DBS equipment on rental or commonly owned property. As discussed above, Philips and Thomson do not advocate government-mandated access to an owner's property by third-parties nor does the Further Notice propose such a rule.

After setting up the strawman premise of government-mandated, third-party ownership, these commenters analyze Section 207 under the precedent set in Loretto.^{7/} Loretto, however, is inapposite here, because the Court's decision turned on the fact that the physical occupation of the landlord's property involved a third party, not the required provision of a service at the request of a tenant in the building where the landlord owned the installation. Loretto expressly states that a different question would have been presented to the Court if the state statute in question:

required landlords to provide cable installation if a tenant so desires . . . since the landlord would own the installation. Ownership would give the landlord rights to placement, manner, use, and possibly the disposition of the installation. The fact of ownership is . . . not simply "incidental" . . . ; it would give a

^{6/} NAA Joint Comments at 4; ICTA Comments at 2; CAI Comments at 14.

^{7/} In Loretto, the Court held that a New York statute that required an apartment building owner to permit a cable television franchisee to place its wires on the owner's property constituted a per se taking of the owner's property without requiring just compensation. The Court determined that the statute mandated a permanent physical occupation of the owner's property by a third party without just compensation, thereby violating the Fifth Amendment rights of the building owner. Loretto, 458 U.S. at 419.

landlord (rather than a CATV company) full authority over the installation except only as government specifically limited that authority. The landlord would decide how to comply with applicable government regulations concerning CATV and therefore could minimize the physical, esthetic, and other effects of the installation.^{8/}

Opponents have attempted to obscure the Loretto Court's holding regarding third-party occupation, by assuming that the Commission's rules, if extended to rental properties and commonly-owned property, would require that DBS antennas be owned by a third-party, a tenant or a unit owner.^{9/} As noted above, that is simply not the case and is not a position that Philips or Thomson advocates. As discussed above, Philips and Thomson envision that providing tenants and condominium unit owners with access to DBS services need not involve third party ownership of facilities.

Indeed, Loretto supports governmental authority to regulate the landlord-tenant relationship where no third-party occupation has been mandated. The Loretto Court affirmed that governmental entities "have broad power to regulate housing conditions in general and landlord-tenant relationships in particular without paying compensation for all economic injuries that such regulation entails."^{10/} The Loretto Court expressly states that

^{8/} Id. at 440, n. 19.

^{9/} See CAI Comments at 16; NAA Joint Comments at 6; ICTA Comments at 4. However, in making this assumption, CAI expressly concedes and NAA and ICTA impliedly concede that no takings would exist if the landlord owned the DBS installation.

^{10/} Id. at 440; see also Yee v. City of Escondido, 503 U.S. 519, 527 (1992) (holding that where laws regulate the owner's use of land by regulating the relationship between landlord and tenant, no taking occurs).